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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,750	01/26/2001	Kimihiko Nishioka	P 0277074 OL92500N-US	7416
909	7590	01/08/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			ASSAF, FAYEZ G	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

2872

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,750

Applicant(s)

NISHIOKA, KIMIHIKO

Examiner

Fayez G. Assaf

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-6, 8-33 and 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 34 and 46-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2003 has been entered.

Claim Objections

Claims 53 and 54 are objected to, because the recitation with respect to "said liquid crystal layer" lacks sufficient antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7, 34, 46, 52, 53 and 54 are rejected under 35 U.S.C. 102(e) as being anticipated by Koops (US 6,064,506).

Regarding claims 7, 34, 53 and 54, Koops discloses a variable optical element (see Fig. 2), comprising, a liquid crystal impregnated into interstitial voids in a dispersed photonic structure having a two-dimensional or three-dimensional lattice structure (line 57 of Col. 3 to line 25 of Col. 4), wherein the liquid crystal layer and the photonic crystal are configured and arranged to converge or diverge light.

Regarding claims 53 and 54, it is noted that the liquid crystal is a variable refractive-index substance.

Regarding claim 46, Koops discloses the optical axis of the variable hologram being at 0 degree with respect to the normal (left holograms in Fig. 2), which satisfies the second condition.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koops.

Regarding claims 47-51, Koops discloses the variable optical element being used in an optical switch. Koops does not disclose the combination of the variable optical element in the optical devices variously recited (display, finder, optical pick-up, variable-focus glasses or a measuring device). However, utilizing such a variable hologram, for a multiplicity of purposes, in said devices is conventional and well known in the art.

It would have been obvious, at the time the invention was made, to a person having ordinary skill in the art to employ variable hologram(s) in such devices so as to reduce the weight of the optical devices, and the manufacturing costs.

Response to Arguments

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Applicant's arguments filed 10/22/2003 have been fully considered but they are not persuasive.

Applicant argues that Koops does not teach or suggest that the photonic crystals can be configured and arranged to converge or diverge light. The Examiner notes that the configuration of the filter of Koops *inherently* causes the light traversing the material of the optical filter to refract, i.e. the filter converges or diverges light when the electric field is not applied. In essence, the filter selectively reflects or refracts light.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fayez G. Assaf whose telephone number is (571) 272-2307 which will be replacing the (703) 306-5526 number commencing on 1/20/2004. The examiner can normally be reached on 9-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Fayez G. Assaf
Examiner
Art Unit 2872

FA
1/6/04

Fayez Assaf